

1 Elizabeth Burton Ortiz, Bar No. 012838
2 Executive Director
3 Arizona Prosecuting Attorneys'
4 Advisory Council
5 1951 West Camelback Road, Suite 202
6 Phoenix, AZ 85015-3407
7 (602) 542-7222 / FAX (602) 274-4215
8 Elizabeth.Ortiz@apaacaz.com

9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 In the Matter of:

12 **PETITION TO AMEND ARIZONA**
13 **RULE OF CRIMINAL**
14 **PROCEDURE 20(b)(1)**

Supreme Court No. R-19-0025

15 **COMMENT OF**
16 **THE ARIZONA PROSECUTING**
17 **ATTORNEYS' ADVISORY**
18 **COUNCIL**

19 **I. BACKGROUND OF PETITION**

20 The Arizona Attorneys for Criminal Justice has filed a petition to amend
21 Arizona Rule of Criminal Procedure 20(b). The petition is designed to address a
22 decision of the Arizona Court of Appeals, Division Two, on which Petitioner
23 disagrees. The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") has
24 considered the proposed amendments in the petition and opposes them. The Court
25 of Appeals' decision correctly decided the issue at hand, and the Arizona Supreme
Court denied further review. Apart from the correctness of the decided issue, a
criminal rule change should not be the avenue on which an adverse appellate
decision is challenged.

II. DISCUSSION/ANALYSIS

Rule 20 (“Judgment of Acquittal or Unproven Aggravator”) provides for a judgment of acquittal either before verdict or after verdict “if there is no substantial evidence to support” a conviction, allegation, or verdict. Petitioner has cited *State v. Godoy (Whitney)*, 244 Ariz. 327 (App. 2017), rev. denied (May 8, 2018), as a basis for its requested change to Rule 20. Notably, *Godoy* did not involve an issue of “substantial evidence,” which Rule 20 was designed to address, but rather juror misconduct. There, a jury was discharged after several jurors consulted, during deliberations, legal definitions that were not presented at trial. After discharge, Godoy sought to raise again his Rule 20(a) motion, which the trial court had already denied, or, in the alternative, to bring the same motion as a 20(b) motion. The trial court considered the motion as one for reconsideration and granted it.

The Court of Appeals, Division Two, reversed. It held that the trial court lacked authority to grant the motion under either Rule 20(a) or 20(b) because the trial court had already ruled at the close of the State’s case under Rule 20(a) and because no verdict had been returned, as required by Rule 20(b) and Rule 23.2 (except for specified situations, “in every case the jury must render a verdict finding the defendant either guilty or not guilty”). The Court further held that Arizona had explicitly rejected allowing a motion for judgment of acquittal after a mistrial had been declared or jury otherwise discharged when it adopted the provisions of Rule

1 20. *Godoy*, at 329, ¶ 10. The Court noted that the Arizona rule was derived from
2 the Federal Rules of Criminal Procedure, which provided for a grant of a motion for
3 judgment of acquittal after a mistrial at the time the Arizona rule was adopted.
4 Adoption of that provision was expressly declined by the Arizona Supreme Court.
5

6 There is no reason to change Rule 20 based on the Court of Appeals' decision
7 in *State v. Godoy*. The issue of juror misconduct during jury deliberations, at issue
8 in *Godoy*, is completely unconnected to the quantum of evidence standard that is
9 addressed by Rule 20. *State v. West*, 226 Ariz. 559, ¶¶ 14, 16 (2011) (the standards
10 for ruling on motions for judgment of acquittal under Rule 20 are the same whether
11 pre- and post-verdict motion; was there "substantial evidence" to support a
12 conviction); *see also State v. Goudeau*, 239 Ariz. 421, 461, ¶ 169 (2016) (acquittal
13 is required under Rule 20 if there is no substantial evidence to warrant a conviction).
14 *Godoy* does not address the substantial evidence standard.
15
16

17 Petitioner argues that the Court of Appeals' decision is "absurd" and results
18 in bad public policy, citing *State v. West* as a basis for this claim. However,
19 Petitioner fails to address the quantum of evidence issue that was the crux of *West*
20 and that Rule 20 was designed to address. In fact, contrary to Petitioner's argument,
21 *West* actually removed *restrictions* on the trial court's ability to grant a Rule 20(b)
22 motion based on insufficient evidence when it disproved of the limiting language of
23 *State ex rel. Hyder v. Superior Court*, 128 Ariz. 216 (1981). *West*, at ¶ 14. Before
24
25

1 *West, Hyder* required that a trial court could only grant a Rule 20(b) motion if it
2 concluded it had considered “improper evidence” and changed its position on prior
3 evidentiary rulings. *Id.* Because those restrictions were removed by *West*, that case
4 does not support Petitioner’s argument that the *Godoy* decision results in bad public
5 policy.
6

7 **III. CONCLUSION**

8
9 The Arizona Prosecuting Attorneys’ Advisory Council respectfully opposes
10 the amendments to Rule 20(b), Ariz. R. Crim. P., as set forth in petition R-19-0025.
11 *State v. Godoy*, the appellate decision on which the petition is based, does not support
12 a need for the rule change, and the Arizona Supreme Court has already expressly
13 rejected adoption of the change Petitioner seeks.
14

15 RESPECTFULLY SUBMITTED this 18th day of March, 2019.

16
17 

18 Elizabeth Burton Ortiz, #012838

19 Executive Director

20 Arizona Prosecuting Attorneys’

21 Advisory Council

22 Electronic copy filed with the
23 Clerk of the Arizona Supreme Court
24 this 18 day of March, 2019.

25 By: 